

APPEAL NO. 010824

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 29, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the claimant timely reported his injury to his employer; and that the claimant had disability from July 11, 2000, through November 5, 2000. The appellant (carrier) urges on appeal that these determinations are not supported by the evidence. The appeals file contains no response from the claimant.

DECISION

Affirmed.

A "compensable injury" means "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." Section 401.011(10). The claimant had the burden to prove he was injured in the course and scope of his employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). In the present case, conflicting evidence was introduced at the CCH regarding this issue. The claimant presented evidence that he sustained a compensable injury to his back on _____. The carrier contended that the claimant did not sustain a compensable injury, but rather made a retaliatory allegation of injury in response to being terminated by his employer. The hearing officer determined that the claimant sustained a compensable injury on _____. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951).

Whether a claimant sustained disability as a result of the compensable injury and whether the injury was timely reported to the employer are likewise questions of fact to be determined by the hearing officer. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993, and Texas Workers' Compensation Commission Appeal No. 93761, decided October 4, 1993. Under the facts of this case, we perceive no error in the hearing officer's determinations that the claimant had disability from July 11, 2000, through November 5, 2000, and that the claimant timely reported the injury to his employer.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge